

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Section Number: 100.2196 Proposed Action: New Section
- 4) Statutory Authority: 35 ILCS 5/210.5 and 5/1401(a)
- 5) A Complete Description of the Subjects and Issues Involved: Provide guidance for taxpayers seeking to claim the credit for employee child care costs under 35 ILCS 5/210.5.
- 6) Will this proposed amendment replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>IL Register Citation</u>
100.9030	New Section	28 Ill. Reg. 4091, 03/05/04
100.9040	New Section	28 Ill. Reg. 4091, 03/05/04
100.9050	New Section	28 Ill. Reg. 4091, 03/05/04
100.9060	New Section	28 Ill. Reg. 4091, 03/05/04
100.9700	Amendment	28 Ill. Reg. 4509, 03/12/04
100.2185	New Section	28 Ill. Reg. 9225, 07/09/04

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Paul Caselton
Deputy General Counsel - Income Tax
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794
Phone: (217) 782-7055

- 12) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: The employee child care credit is allowed only to taxable corporations who

provide child-care facilities for their employees, so this rulemaking has no effect on municipalities or not-for-profit corporations and should affect few, if any, small businesses.

B) Reporting, bookkeeping or other procedures required for compliance: None.

C) Types of professional skills necessary for compliance: None.

13) Regulatory Agenda on which this rulemaking was summarized: July 2004

The full text of the Proposed Amendment begins here:

SUBPART B: CREDITS

Section 100.2196 Employee Child Care Assistance Program Tax Credit (IITA Section 210.5)

a) Beginning with tax years ending on or after December 31, 2000, each corporate taxpayer is entitled to a credit against the tax imposed by subsections (a) and (b) of Section 201 of the Act in:

1) *an amount equal to 30% of the start-up costs expended by the corporate taxpayer to provide a child care facility for the children of its employees; plus*

2) *5% of the annual amount paid by the corporate taxpayer in providing the child care facility for the children of its employees. (IITA Section 210.5(a))*

The 30% credit for start-up costs is allowed only for tax years ending on or before December 31, 2004. The 5% credit for annual expenses is allowed for all years ending on or after December 31, 2000, and is exempt from the sunset provisions of IITA Section 250.

b) To receive the tax credit under IITA Section 210.5, a corporate taxpayer must either *independently provide and operate a child care facility for the children of its employees or join in a partnership with one or more other corporations to jointly provide and operate a child care facility for the children of employees of the corporations in the partnership.* (IITA Section 210.5(a)) Amounts paid to a child care facility that is not operated by the taxpayer or by such a partnership do not qualify for the credit. For purposes of this credit, a "child care facility" is limited to a child care facility located in Illinois. (IITA Section 210.5(c))

c) For purposes of this credit, the term "start-up costs" qualifying for the 30% credit means *the cost of planning, site-preparation, construction, renovation, or acquisition of a child care facility.* (IITA Section 210.5(c)) Such costs are the capital expenditures incurred in creating a new facility or expanding an existing facility, both tangible and intangible. In the case of a capitalized asset, the 30% credit is allowed in the year the asset is placed in service in the child care facility.

1) Uncapitalized expenses incurred in connection with the child care facility prior to commencing operations are start-up costs. For example, salaries paid prior to the opening of the facility to the employees hired to operate the facility are start-

up costs. Such expenses qualify for the 30% credit in the tax year expensed, even if the facility is not in operation by the end of the tax year.

- 2) Capital expenditures that are expensed rather than depreciated under IRC Section 179 qualify as start-up costs in the same manner as expenditures that are actually capitalized and amortized.
- 3) In the case of property previously acquired by the taxpayer and later converted to use in the child care facility, the start-up cost shall be the adjusted basis of such property at the time of conversion, plus any capital costs of renovation or modification to make the property ready for use in the child care facility.
- 4) Any expenditure which qualifies for the federal employer-provided child care credit as an amount paid or incurred to acquire, construct, rehabilitate or expand property to be used in a new or expanded child care facility under the provisions of IRC Section 45F(c)(1)(A)(i) shall qualify for the 30% credit, even if the requirements of IRC Section 45F(c)(1)(A)(i)(II) or (III) are not met and provided that the facility is operated by the employer corporation or a partnership described in subsection (b) of this section.

Example. An employer acquires a building to be used as a child care facility and the land on which the building is located. The cost of the building qualifies for the federal credit, but the cost of the land does not qualify because IRC Section 45F(c)(1)(A)(i)(II) provides that only depreciable property may qualify for the federal credit. The cost of both the building and the land will qualify for the credit allowed under this IITA Section 210.5.

- d) The *annual amount paid* by the employer qualifying for the 5% credit shall include all expenses (including depreciation and amortization) incurred in connection with the operation of the child care facility that are deducted during the taxable year. Depreciation and amortization of capitalized items and IRC Section 179 deductions qualify for the credit whenever the original expenditure qualified as a start-up cost for the 30% credit, provided that the asset continues to be used in the operation of the child care facility. In the year the facility commences operations, only expenses deductible in the period after the commencement of operations qualify for the 5% credit. Expenses of the facility deducted prior to the commencement of operations qualify only for the 30% credit as start-up costs. Any expense qualifying for the federal employer-provided child care credit under IRC Section 45F(c)(1)(A)(ii) for a tax year shall also qualify for the 5% credit in the same tax year. Any expense for which the employer claims the 5% credit authorized under this section cannot qualify for the 5% credit authorized the Dependent Care Assistance Program Credit under IITA Section 210. (IITA Section 210.5(a))
- e) Any credit allowed under this Section which is unused in the year the credit is earned *may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year* until it is used. (IITA Section 210.5(b)) Any 30% credit earned in tax years ending on or before the December 31, 2004 sunset date may be carried forward to tax years ending after that date. *The credit must be applied to the earliest year for which there is a tax liability. If there are credits from more than one tax year that are available to offset a liability, then the earlier credit must be applied first.* (IITA Section 210(b))

- f) A corporate taxpayer claiming the credit provided by IITA Section 210.5 needs to maintain records sufficient to document the costs associated with the provision of a child care facility and the “start-up costs” expended to provide a child care facility. Documentation must take the form of vouchers paid, cancelled checks or other proof of payment. Should the expenditure not be solely for child care, the documentation should explain how the amount allocated for child care was determined.

If the child care provided includes care for non-employee children, the costs must be allocated between employee children and non-employee children. The method of allocation used must be reasonable and documented.

- g) The credit is allowed only to corporations subject to tax under IITA Section 201(a) and (b). Neither Subchapter S corporations nor shareholders of Subchapter S corporations are allowed to claim the credit.

(Source: Added at 28 Ill. Reg. _____, effective _____)